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09/889098 #10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No. 072330/0102

In re patent application of

Gunther SCHERER

Group Art Unit: Unassigned

Serial No. 09/889,098

Examiner: Unassigned

Filed: October 22, 2001

Title: METHOD FOR INDUCING OR PROMOTING AN ANTHOCYANIN  
COLORATION IN PLANTS AND/OR FRUIT WHICH BASICALLY PRODUCE  
ANTHOCYANIN

**PETITION FOR RESTARTING TIME PERIOD FOR REPLYING TO DEFECTIVE  
RESPONSE UNDER 37 C.F.R. § 1.181(a) or, alternatively,  
PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER  
37 C.F.R. § 1.181(a)**

Commissioner for Patents  
Washington, D.C. 20231  
BOX PCT DO/EO

RECEIVED

18 MAR 2001

International Division

Sir:

This Petition is filed in reply to the Notice of Defective Response mailed on November 16, 2001. Applicant hereby petitions under 37 C.F.R. § 1.181(a) to request a restart of the period for response to the Notice of Defective Response. Alternatively, even though Applicant has not received a Notice of Abandonment, this petition serves to request withdrawal of the holding of abandonment of the present application for failure to respond to the Notice of Defective Response.

**I. SUBSTANCE OF THE NOTICE OF DEFECTIVE RESPONSE**

The Notice of Defective Response states that Applicant has submitted the U.S. Basic National Fee, Priority Document, Copy of IPE Report, Copy of the International Search Report, Copy of References Cited in the International Search Report, Copy of the International Application, and Declaration and Preliminary Amendments, but that Applicant must provide a translation of the text in the drawings into English.

By this Petition Applicant requests a restart of the period for response to address the issues raised in the Notice of Defective Response.

**II. THIS PETITION IS TIMELY AS IT IS FILED  
WITHIN TWO WEEKS OF ACTUAL RECEIPT OF  
THE NOTICE OF DEFECTIVE RESPONSE**

This Petition is not being filed within one month of the mail date of the Notice of Defective Response or within two months of a Notice of Abandonment. However, the Petition is timely under 37 C.F.R. § 1.181(a) because Applicant or Applicant's representative, Foley & Lardner, had no knowledge of the Notice of Defective Response or that the application was considered abandoned until a telephone communication on January 3, 2003, from Winston Alvarado of the U.S. Patent and Trademark Office (USPTO) to the undersigned. Mr. Alvarado informed Applicant's representative of the failure to respond to the Notice of Defective Response mailed on November 16, 2001. On January 3, 2003, Mr. Alvarado also sent via facsimile a copy of the Notice of Defective Response to Applicant's representative. A copy of this facsimile transmission is attached as Exhibit A. Applicant is submitting this petition within 2 weeks of the actual notice of the receipt of the Notice of Defective Response, *i.e.*, by January 17, 2003. Thus, this petition is timely.

A search of the file jacket and docket records of Foley & Lardner indicates that the Notice of Defective Response was not received. Foley & Lardner maintains docket records of all replies due to the USPTO. The response due in connection with a Notice of Defective Response mailed on November 16, 2001, would have been due within one month of that date, *i.e.*, by December 16, 2001. The daily docket report for the responsible billing partner, Bernhard D. Saxe, for December 14, 2001 and December 17, 2001 (December 16, 2001 was a Sunday) is enclosed in the sealed accompanying envelop as Exhibit B. As the daily docket report indicates, no document of any type relating to Serial No. 09/889,098 was docketed. In addition, Foley & Lardner maintains a manual docket record log of all communications submitted to the USPTO. A copy of the pages for December 14, 2001 and December 17, 2001 (December 16, 2001 was a Sunday) are included in the sealed accompanying envelop as Exhibit C. As the manual docket record log indicates, no documents relating to Serial No. 09/889,098 were filed with the USPTO.

The information contained in the documents submitted with this petition as Exhibits B and C is proprietary and is submitted only for the purpose of rendering a decision on the subject petition. Once a favorable decision on this petition has been reached, it is respectfully requested that the proprietary information be expunged from the records of the subject application and returned to applicant.


Even though a Notice of Abandonment has not been received by Foley & Lardner, nor has a Notice of Abandonment been sent by the USPTO, this petition serves, in the alternative, as a petition to withdraw a holding of abandonment.

### III. CONCLUSION

This Petition is not being filed within one month of the mail date of the Notice of Defective Response, nor within two months of a Notice of Abandonment. However, for the reason set forth above the Petition is timely under 37 C.F.R. § 1.181(a). Accordingly, no fee is believed to be due. See M.P.E.P. 711.03(c) sec. II.

Respectfully submitted,

January 16, 2003  
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Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 19-0741 for any such fees; and applicant(s) hereby petition for any needed extension of time.
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